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May 10, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

MAY 10 2012

Federal Communications Commission  
Office of the Secretary

**Attn: CGB Room 3-B431**

**Re: Cedar Street Baptist Church of God's Request for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-1132  
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Cedar Street Baptist Church of God ("Cedar Street") to exempt its program *Hope from the Hill* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup>

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<sup>1</sup> Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Cedar Street Baptist Church of God, Case No. CGB-CC-1132, CG Docket No. 06-181 (April 12, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0412/DA-12-578A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0412/DA-12-578A1.pdf); Petition for Exemption from Closed Captioning Requirement for Cedar Street Baptist Church of God, Case No. CGB-CC-1132, CG Docket No. 06-181 (June 28, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021709552> [hereinafter *Cedar Street Petition*].

Consumer Groups oppose the petition because Cedar Street does not include sufficient information to demonstrate that it cannot afford to caption its programming.

Consumer Groups acknowledge Cedar Street's efforts to "to meet the needs of people that are unwilling or unable to attend church but yet desire to [be] closer to God through his taught and preached Word" and "to reach a diverse population."<sup>2</sup> The requested exemption, however, would deny equal access to Cedar Street's programming to community members who are deaf or hard of hearing. Cedar Street specifically identifies "those that are incapacitated, shut in, [or] shut out" as a target audience for its broadcast.<sup>3</sup> This constituency is one that may distinctly benefit from the inclusion of closed captions.

Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits offered by video programming on equal terms with their hearing peers. Captioning is not, as Cedar Street states, an "additional amenity of the broadcast," but rather an essential and integral component of programming that utilizes the public airwaves and therefore must serve the public interest—including viewers who are deaf or hard of hearing.<sup>4</sup>

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

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<sup>2</sup> *Cedar Street Petition* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 5.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"), as added by the Telecommunications Act of 1996 Act ("1996 Act")<sup>5</sup> and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),<sup>6</sup> "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the "undue burden" standard in section 713(e) of the 1934 Act, pursuant to the Commission's existing rules in 47 C.F.R. § 79.1(f)(2)-(3).<sup>7</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>8</sup> If a petitioner

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<sup>5</sup> Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

<sup>6</sup> Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

<sup>7</sup> *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1123/FCC-11-159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf) [hereinafter 2011 ISO]. The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/011/db1123/FCC-11159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf). See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

<sup>8</sup> See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

sufficiently demonstrates its inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.<sup>9</sup> Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.<sup>10</sup>

#### **I. Cedar Street's Ability to Afford Captioning**

Cedar Street's petition does not sufficiently demonstrate that Cedar Street cannot afford to caption its programming. To make such a demonstration, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.<sup>11</sup> Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

To successfully demonstrate that captioning would pose an undue burden in light of its financial status, a petitioner must also demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.<sup>12</sup> To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petition provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.<sup>13</sup>

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<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *The Wild Outdoors*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

<sup>13</sup> Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated



Cedar Street states that its broadcast station would charge \$400 per episode to caption its programming, but provides no verifying documentation or correspondence from the station.<sup>14</sup> Cedar Street does not suggest that it has sought estimates from closed captioning companies, which likely can provide captioning at a lower cost than that of the station; for example, a quick Google search reveals that one captioning provider currently quotes a weekly rate of \$150 for 30-minute religious programs like Cedar Street's.<sup>15</sup> Without demonstrating some effort to find an affordable captioning provider, it is impossible to accurately assess the actual costs of captioning Cedar Street's programming.

Even in the event that Cedar Street cannot caption its programming for less than \$400 an episode, it is unclear that Cedar Street cannot afford to do so. A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue economic burden.<sup>16</sup>

Cedar Street submits only partial balance and profit and loss sheets, which cover only January 1 through June 21 of 2011 and do not provide a complete picture of Cedar Street's annual finances.<sup>17</sup> But if the sheets in fact represent an adequate illustration of Cedar Street's financing, it is unclear why Cedar Street cannot afford to caption its programming. Even at Cedar Street's broadcast station's quoted cost of \$400 per week, closed captions would have cost only \$10,800 for the approximately 27 weeks between

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correspondence from at least three captioning providers in its petition) *with The Wild Outdoors*, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

<sup>14</sup> *Cedar Street Petition* at 5.

<sup>15</sup> Closed Caption Maker, <http://www.ccmaker.com/> (last visited May 7, 2012).

<sup>16</sup> E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

<sup>17</sup> *Cedar Street Petition* at 12-17.

January 1 and June 21 of 2011; at the more reasonable rate of \$150 per week quoted above, closed captions would have cost only \$4,050. During that period, Cedar Street took in a net income of \$10,239.05—more than enough to pay for captioning.<sup>18</sup>

Cedar Street nevertheless suggests that paying for captioning would affect its “over 50 well defined and developed ministries that support [its] internal and external customers” and “divert funds from the Mission Ministry.”<sup>19</sup> In analyzing whether captioning creates an undue economic burden, however, the Commission does not consider “the extent to which the provision of captioning would curtail other activities important to a petitioner’s mission.”<sup>20</sup> Rather, the Commission “balance[s] the need for closed captioned programming against the potential for hindering *the production and distribution of programming*.”<sup>21</sup> Cedar Street presents no evidence that providing captions would hinder the production and distribution of its programming.

Finally, Cedar Street implies that it should be eligible for an exemption because of its non-profit status.<sup>22</sup> Though a petitioner’s non-profit status may relate to its financial resources, the Commission does not “grant [petitioners] favorable exemption treatment because of their non-profit status.”<sup>23</sup>

## **II. Alternative Avenues for Captioning Assistance**

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.<sup>24</sup> A petitioner must provide documentation showing that it has sought assistance from

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<sup>18</sup> *Cedar Street Petition* at 17.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *See Anglers 2011*, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

<sup>21</sup> *Id.* (emphasis in original).

<sup>22</sup> *Cedar Street Petition* at 5.

<sup>23</sup> *Anglers 2011*, 26 FCC Rcd. at 14,951, ¶ 18.

<sup>24</sup> *Id.* at 14,955-56, ¶ 28 (internal citations omitted).

other parties involved with the creation and distribution of its programming,<sup>25</sup> sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.<sup>26</sup>

Cedar Street states that its broadcast station “do[es] not provide financial support,” but does not provide any verifying correspondence with the station or other documentation.<sup>27</sup> Nor does Cedar Street demonstrate or suggest that it has sought any other assistance, such as sponsorships, to caption its programming. Without showing that it has sought outside assistance in captioning its programming, Cedar Street has not demonstrated that it has exhausted all avenues for funding captioning.

### **III. The Local, Non-News Exemption**

Finally, Cedar Street also argues that its programming qualifies for the local, non-news exemption to the closed captioning rules.<sup>28</sup> The Commission has made clear that the categorical exemption under 47 C.F.R. § 79.1(d)(8) specifically requires that “‘locally produced and distributed non-news programming’ be produced by the *video programming distributor*, not programmers.”<sup>29</sup> Cedar Street does not qualify for this exemption because it is not a video programming distributor.

### **IV. Conclusion**

Cedar Street’s petition does not include sufficient information to demonstrate that Cedar Street cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require Cedar Street to comply with the closed captioning rules.

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<sup>25</sup> See, e.g., *Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

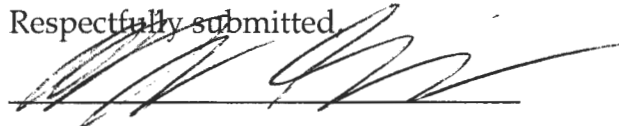
<sup>26</sup> See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

<sup>27</sup> *Cedar Street Petition* at 5.

<sup>28</sup> *Id.* at 3-4.

<sup>29</sup> See *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17 n. 63 (emphasis added).

Respectfully submitted,



Blake E. Reid, Esq.<sup>†</sup>

May 10, 2012

*Counsel for Telecommunications for the  
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<sup>†</sup> Counsel thanks Georgetown Law student clinician Allyn Ginns for her assistance in preparing these comments.



**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

\_\_\_\_\_/s/\_\_\_\_\_  
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### CERTIFICATION

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

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Claude Stout  
May 10, 2012

### CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on May 10, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Cedar Street Baptist Church of God  
2301 Cedar Street  
Richmond, VA 23223

A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich  
May 10, 2012